79236-4

23698-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ALYSSA KNIGHT, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE JEROME J. LEVEQUE

SUPPLEMENTAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

WASHINGTON CASES

SUPREME COURT CASES

I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred in entering judgment and in sentencing appellant on counts I and II where only one conspiracy occurred.

2. The conviction for count II violated appellant's right to be free from double jeopardy.

3. The offender scores for counts I and III erroneously include two points for count II.

II.

ISSUE PRESENTED

A. DOES DOUBLE JEOPARDY APPLY TO COUNT II?

III.

STATEMENT OF THE CASE

The following facts are derived from the court's rendition of the facts in *State v. Williams*, ___ Wn. App. ___, 128 P.3d 98 (2006).

The defendant was friends with the co-conspirators involved in this case. The defendant met the victim who supposedly was carrying money,

jewelry and drugs. The group decided to do a "lick" on the victim. A "lick" is a synonym for a robbery.

At various times and locations, the group of conspirators laid nebulous plans to rob the victim, Arren Cole. On Wednesday, September 24, 2003, the group, along with Mr. Cole was at a nightclub in Post Falls, Idaho. Plans were made to rob the victim that evening and the defendant rode back to Spokane in the victim's car, with the goal of determining whether the victim was armed.

The planned robbery was aborted when the defendant reported to the other co-conspirators that the victim might be armed.

On Thursday, the group again planned to rob the victim. The defendant met the victim in a downtown Spokane tavern. One of the co-conspirators, Dione Williams, was also in the tavern. The defendant surreptitiously reported to Mr. Williams that the victim was carrying a quantity of money and jewelry. The defendant accompanied the victim to his hotel room and later lured the victim down to an alley on the pretext of waiting for her ride.

The other co-conspirators arrived in a car. Mr. Williams got out of the car and the defendant got into the car. Using a gun, Mr. Williams attempted to rob the victim. The victim ran away and Mr. Williams chased him, shooting the victim in the back.

The defendant pled guilty on May 3, 2004 to conspiracy to commit second degree robbery, conspiracy to commit first degree burglary and murder in the second degree. CP 61-62. The appellate commissioner rejected the *Anders*[1] brief filed by the defendant and appointed new counsel. A second brief was filed on November 30, 2005. The defendant then filed a supplemental brief to which this brief responds.

IV.

ARGUMENT

The defendant argues that count II of her guilty plea (conspiracy to commit first degree burglary) should be dismissed on double jeopardy grounds and cites to *State v. Williams*, ___ Wn. App. ___, 128 P.3d 98 (2006). The *Williams* case involves nearly identical facts because Williams was a co-conspirator with the defendant in this case. This court ruled that all of the conspiracies were actually one conspiracy and dismissed two other conspiracy convictions. The State has filed for review of that decision in the Washington State Supreme Court.

The focus in conspiracy cases is upon the agreements, more so than the particular crime being agreed upon. "...[T]he appropriate focus in Washington is on the conspiratorial agreement, not the specific criminal

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1 *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967).

object or objects." *State v. Bobic*, 140 Wn.2d 250, 265, 996 P.2d 610 (2000). If there is one agreement amongst the co-conspirators to commit multiple statutory violations, only one crime should be charged: the agreement itself. *Braverman v. United States*, 317 U.S. 49, 63 S. Ct. 99, 87 L. Ed. 23 (1942).

If one crime is encompassed in multiple instances of conspiratorial agreements, the double jeopardy clause may prevent prosecution of each conspiratorial agreement.

"Multiple conspiracies may be charged where the facts of the case support multiple criminal agreements." *Bobic, Id.* at 266. The State maintains that the *Williams* court misread both *Bobic* and the facts of the case and rendered a faulty decision.

The *Williams* court did not include in its analyses, that in addition to multiple instances of agreements, there were multiple crimes contemplated. The group of co-conspirators discussed and settled on a plan to commit first degree burglary that was separate from the other conspiracies.

The testimony was that on the Tuesday and Wednesday prior to the victim's murder, plans were laid to rob the victim on each of those nights, but the plans were aborted. On Wednesday, Ms. Knight turned up indications that the victim might be armed that evening, so the plan was called off. New plans were formulated by Ms. Knight and others to rob the

victim. Ms. Knight was to take the victim on a date and get the victim alone. Nebulous plans were discussed involving co-conspirators completing the robbery once Ms. Knight had lured the victim into an isolated location.

There were multiple plans and multiple attempts as evidenced by attempts to rob the victim on Wednesday and plans to commit a first degree burglary.

It is true that each of the conspiracies were intended to deprive the victim of his valuables, in one fashion or another. However, each conspiracy was designed to perform actions on a certain day. *Bobic* does not stand for the proposition that multiple conspiracies will not be prosecuted when there are multiple objects of those conspiracies.

There are distinct differences amongst the various conspiracies. One set of discussions amongst the co-conspirators was to have culminated with a robbery on Wednesday night. Some of the co-conspirators followed the defendant and the victim from Post Falls to Spokane in preparation for the robbery. Because the defendant thought the victim had a gun, the robbery was called off. This was a completed attempted second degree robbery. All the discussions to this point were to complete the "lick" on Wednesday evening.

There was no evidence that there was a contemplation by the co-conspirators that they would continue to try to rob the victim until a robbery

was completed. This sort of fixity of purpose can be assumed, but there was no mention of an intention of the parties to continue until successful. The goal was to act on a certain evening, using nebulous and shifting techniques. The techniques, although amorphous, were clearly aimed at completing each robbery on a particular evening. There is no logic in "rolling into one" all the different conspiracies contemplated by the defendant and the co-conspirators.

The plans to rob the victim on Friday night were not formed until after the aborted robbery attempt on Wednesday. While it true that Washington law focuses on the conspiracy itself rather than the object of the conspiracy, the object cannot be ignored entirely. If the conspiracies leading up to the aborted Wednesday attempt are properly accorded to that attempt, and the conspiratorial agreements regarding the first degree burglary are properly accorded to its projected object, then there is no blending of the various conspiracies. Once the Wednesday robbery attempt was aborted, *new* conspiratorial agreements were completed by the co-conspirators to rob the victim on Friday night and while the methods were similar to the Wednesday robbery attempt, they were not the same conspiracy.

If the logic of *Williams* is accepted, all agreements between the co-conspirators become one crime, no matter how many different crimes are planned, so long as the crimes are not carried out. Essentially, the *Williams*

court ignored the fact that the conspiracies to rob the victim were separate entities, designed by the co-conspirators to occur on specific days.

The conspiracy in Count II was a separate entity from the remaining counts and the goal of the conspiracy in Count II was different than the other counts. The defendant is arguing that she should be freed of any consequences for her actions in count II. Count II should not be dismissed.

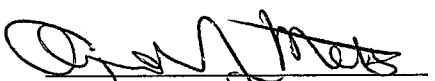
V.

CONCLUSION

For the reasons stated, the convictions of the defendant should be affirmed.

Dated this 16th day of March, 2006.

STEVEN J. TUCKER
Prosecuting Attorney



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